IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 1892 of 2002

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Sadhasivam .. Appellant/Defendant

Versus

Chellamuthu .. Respondent/Plaintiff

Appeal under Section 100 CPC against the decree and judgment dated 07.06.2002 made in A.S.No. 59 of 2001 on the file of Subordinate Judge, Dharapuram reversing the decree and judgment dated 24.08.2001 made in O.S. No. 128 of 1999 on the file of District Munsif Court, Kangeyam.

For Appellant : Mr. D.J. Venkatesan
for Mr. V. Raghavachari

For Respondent : Mrs. Mythili
for M/s. Sarvabhauman Associates

JUDGMENT

This second appeal is not admitted and only notice of motion was ordered on 05.12.2002 and after service of notice posted today for admission.

2. The sole Defendant in O.S. No. 128 of 1999 on the file of District Munsif Court, Kangeyam is the appellant in this second appeal. The respondent herein has filed the said suit for permanent injunction against the appellant herein, which was dismissed. The appeal filed by the respondent herein was allowed, hence the present second appeal.

3. It is necessary to mention here that the respondent herein has filed another suit in O.S. No. 239 of 1999 for permanent injunction against the District Collector, Erode; Tahsildar, Kangeyam; Chairman, Pollution Control Board, Chennai; local body authorities and officials of the Tamil Nadu Electricity Board. It is also necessary to state that both the suits namely O.S. No. 128 and 239 of 1999 were tried jointly and dismissed by the trial court by a common Judgment dated 24.08.2001. Aggrieved by the said common Judgment, the respondent herein has filed A.S. No. 60 of 2001 against the decree and judgment made in O.S. No. 239 of 1999, which was dismissed as not pressed and A.S. No. 59 of 2001 filed by him was allowed by the first Appellate Court.

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4. The case of the respondent is that the appellant was running a power loom in a different place and he decided to shift it to the 'B' Schedule property, which is adjacent to his residential house i.e., A schedule property. It is the further case of the respondent that if the appellant is permitted to shift his power loom business to the 'B' Schedule property, it would cause noise and air pollution and also disturbance to the dwelling houses in and around the area where he resides, hence, he submitted representations dated 04.05.1999 and 18.05.1999, Exs. A8 and A9 to the President, Mathur Town Panchayat and to the District Collector, Erode respectively.

5. Before the trial court, the respondent herein has marked Exs. A1 to A13 and examined himself as PW1, one Ponnayal and Chinnasami as Pws 2 and 3 respectively. On behalf of the appellant, Exs. B1 to B6 were marked, the appellant examined himself as DW1 and one Udayakumar as DW2. The trial court has also appointed an advocate commissioner whose report and sketch were marked as Exs. C1 and C2 respectively.

6. The trial court dismissed the suit on the ground that power loom is only a small scale unit and the alleged pollution, both noise and air are imagination and not proved by the respondent by placing any evidence that it would cause such pollution; that several power looms are functioning in and around the suit property and the apprehension of the respondent was only on presumption and assumption; that even if power loom is installed by appellant in the 'B' Schedule property, no disturbance would be caused to the residents in and around the locality or to respondent as apprehended; that in O.S. No. 128/1999, the Pollution Control Board and other authorities not cited as a party and that the appellant alone was arrayed as a party.

7. As mentioned above, A.S. No. 60 of 2001 filed against the decree and judgment in O.S. No. 239 of 1999 was dismissed as not pressed. The other appeal in A.S. No. 59 of 2001 filed against the decree and Judgment in O.S. No. 128 of 1999 was allowed by the first Appellate Court on the ground that the appellant herein not disputed the fact that he made efforts to shift the power loom to the B Schedule property and if the power loom is allowed to be shifted, it would cause air and noise pollution.

8. The learned counsel appearing for the appellant submitted that the appellant has not submitted any application to the authorities concerned and without prior permission from them, it is impossible to shift the power loom to the 'B' schedule property, hence, the suit is pre-matured; that there is no cause of action arose to file the suit; that if the power loom is shifted it would not cause alleged pollution, besides, the respondent has not placed any evidence to prove the same; that the first Appellate Court ought not to have concluded that the power loom would cause pollution in the absence of any evidence and prayed for dismissal of the second appeal.

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9. Per contra, the learned counsel appearing for the respondent submitted that the appellant has categorically deposed in his evidence that he intends to shift the power loom to the B Schedule property and if he was allowed to do so, it would cause air and noise pollution to the residents in and around the suit property and the said fact was not considered by the trial court, however, the first appellate Court, considering the same, has rightly allowed the appeal in A.S. No.59 of 2001. It is further argued by the learned counsel for the respondent that A.S. No. 60 of 2001 was withdrawn since the suit against the Pollution Control Board is not maintainable. In any event, the dismissal of the said appeal no way prevent the respondent from prosecuting the suit for the relief of injunction against the appellant herein and prayed for dismissal of the second appeal.

10. This Court carefully considered the arguments of the counsel for both sides and perused the material records. It is averred by the respondent that the appellant herein has made efforts to install power loom in 'B' Schedule property, hence, as against the said proposal of the appellant, he had sent representations dated 04.05.1999 and 18.05.1999, Exs. A8 and A9 to the President, Mathur Town Panchayat and to the District Collector, Erode respectively. On receipt of the said representation, the Pollution Control Board sent a communication dated 24.09.1999 to the Executive Officer of Muthur Panchayat, 8th respondent in A.S. No. 60 of 2001, not to accord permission to the appellant to erect power loom in the B Schedule property. The 4th defendant, District Environmental Engineer, Pollution Control Board, Erode in his written statement has categorically stated that the appellant has not submitted any application seeking licence for establishing a power loom. It is also seen from Ex.B4 that the appellant herein has obtained planning permission from the local body for construction of residential house in 'B' schedule. Further, the appellant has not applied for electricity service connection for running the power loom, besides, the said authorities are not arrayed in the suit, which is the subject matter of this second appeal.

11. The facts mentioned in para-10 above are admitted. The reasoning of the lower appellate Court in allowing the appeal is that if injunction is not granted and the power loom is allowed to be run, it would cause pollution/nuisance. When we look into the evidence let in by the respondent herein, he has not proved the alleged injury/pollution that would be caused, which is essential to get the relief of injunction. The trial court, on perusal of the evidence came to a conclusion that the respondent has not proved that the proposed industry would cause pollution or disturbance. The trial court further found that several power looms are functioning in and around the suit property and the apprehension of the respondent is baseless. The said finding of the trial court is made after careful consideration of the evidence.

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12. When there is absolutely no finding by the first appellate Court that installing power loom would cause injury/damage to the respondent or the general public, while so, granting the relief of injunction is bad. It is not in dispute that for installing the power loom in 'B' schedule property, prior permission/licence are required from the authorities concerned. Admittedly, the appellant has not even applied for permission or licence or even electricity service connection, which are required for shifting and running of the power loom. It cannot be said that there was a legal duty on the part of the appellant herein towards the respondent and that as there was a breach of that duty, entitle him to initiate an action for the relief of injunction.

13. In other angle when we look into the case, to get the relief of injunction, the plaintiff must show that there is a recognisable right or obligation in his favour, breach of which gives right to a cause of action to file a suit against another person. If such recognisable right or obligation does not exist, the plaintiff is not entitled to an injunction unless of course he is able to show that the act of the defendant would amount to actionable nuisance as a result of which he cannot use his own property in a peaceful manner. Whether the user of the property by the defendants would amount to actionable nuisance which may entitle the plaintiff to file a suit or claim injunction against the defendant, is, therefore, required to be examined. On examination, this Court is of the view that the respondent has not made out a case that the act of the appellant would amount to actionable nuisance, as a result of which he cannot use his own property.

14. Cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Court of law. Cause of action means every fact, which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. The expression cause of action has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances stand forming infraction of the right or immediate cause for the action. In the wider sense, it means, the necessary condition for maintenance of the suit, including not only the infraction of the right but the infraction coupled with the right itself.

15. In case of an apprehended future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat was so certain or imminent that an injury actionable in law will arise unless prevented by injunction. There was no foundation, either in pleadings or in evidence for observations made by the first appellate Court that the proposed setting up of the power loom would cause air and noise pollution/nuisance, hence, the suit filed by the respondent was pre-mature.

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16. When applying the above settled position of law to the facts of this case and analyse the evidence on record, this Court of the view that the respondent has hastily approached the courts below, without any cause of action.

17. It is argued by the appellant that A.S. No. 60 of 2001 was filed against the decree and judgment in O.S.No. 239 of 1999 seeking injunction to restrain the authorities concerned not to accord permission/order/electricity connection to the appellant for installing the power loom in B Schedule, which was disposed as not pressed, hence, it operates as resjudicata. This Court is of the view that withdrawal of A.S. No. 60 of 2001 will have no impact on the other case.

18. In the light of the above discussion, this Court is of the view that the suit filed by the respondent in O.S. No. 128 of 1999 is pre-mature. The first Appellate Court, without considering the same has erroneously allowed A.S. No. 59 of 2001, hence, the decree and judgment of the first Appellate Court in A.S. No. 59 of 2001 is set aside and that the decree and judgment of the trial court in O.S. No. 128 of 1999 is restored and the suit is dismissed. If the plaintiff intends to file an appropriate suit on proof of cause of action, he can do so, if it is permissible under Law.

19. In the result, the second appeal is allowed. No costs. Consequently, connected CMP No. 16092 of 2002 is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge
   Sub-Court
   Dharapuram

2. The District Munsif
   District Munsif Court
   Kangeyam

1 cc to Mr.V.Raghavachari, Advocate, SR.53061
1 cc to M/s. Sarvabhauman Associates, SR.53052

ksj (co)

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